

BROWN GOLDSTEIN LEVY

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May 11, 2018

**VIA ECF**

Honorable Katherine B. Forrest  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *Eason v. New York Board of Elections*,  
Case No. 1:16-cv-04292 (KBF) (AJP)

Dear Judge Forrest:

Pursuant to the Court's orders, on May 16, 2018, Plaintiffs will be providing Defendants with a list of the specific URLs and functions on their websites that Plaintiffs plan to demonstrate at trial. I write on behalf of Plaintiffs to request that the Court order Defendants to make no changes to these identified URLs and functions between the time that Plaintiffs send them this list on May 16 and the end of trial. Plaintiffs first asked Defendants if they would agree to refrain from making such changes in this limited time period, but Defendants refused to commit to preserving the status quo on these specified portions of their websites until they were provided with Plaintiffs' list.

As Plaintiffs will establish at trial, over the course of this litigation Defendants have waited for Plaintiffs to notify them of specific website barriers before attempting to correct them. Indeed, in response to barriers identified in Plaintiffs' expert's revised report this February, Defendants have significantly modified their websites, including as recently as within the past two weeks. Defendants' pattern of attempting to correct items as Plaintiffs point them out leads Plaintiffs to believe that Defendants will likely modify any URLs and functions we identify to them in advance of trial.

As the Court recently explained, "[t]he Federal Rules of Civil Procedure are designed and applied to prevent 'trial by ambush' and ensure that all parties are on notice regarding the issues to be tried and the proof that each party intends to present." (May 1, 2018 Order at 2, ECF No. 215). If Defendants are free to alter the portions of their Websites identified by Plaintiffs between May 16 and the end of trial, Plaintiffs will indeed be ambushed. Plaintiffs will have to retest all listed URLs and functions on at least a daily basis before their trial demonstration and even this vigilance could prove insufficient if an item changes during trial. This Court has noted that "there is a need to put a marker down and finalize the target that the parties are shooting at." (Jan. 17, 2018 Order at 2, ECF No. 195). To ensure that these specific portions of the websites are not a moving target during the roughly two-and-a-half week period between May 16 and the end of trial, an order requiring that Defendants maintain the status quo for this limited period, on very limited portions of their websites, is necessary.

BROWN, GOLDSTEIN & LEVY, LLP

Hon. Katherine B. Forrest  
May 11, 2018  
Page 2

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Because Plaintiffs wish to ensure that Defendants do not make changes to these portions of their websites on the eve of trial to surprise Plaintiffs during their demonstration, they now seek the Court's intervention on this issue.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Weber", written in a cursive style.

Jessica P. Weber

cc: All counsel of record (by ECF)